

Message Text

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S E C R E T SECTION 1 OF 2 SEOUL 10674

EXDIS - DISTRIBUTE AS NODIS

E.O. 11652: GDS

TAGS: PGOV, KS, US

SUBJECT: MUTUAL PROSECUTION ASSISTANCE AGREEMENT: NARROWING THE
GAPS

REF: STATE 297863

SUMMARY: POLCOUNS CLARK MET WITH MOFA AND MOJ OFFICIALS
TO DISCUSS MPAA. DIFFERENCES NOT GREAT WITH TWO EXCEPTIONS.
REQUEST EARLY RESPONSE TO FACILITATE DISCUSSIONS. END SUMMARY.

1. POLCOUNS CLARK MET WITH MOFA'S PAK SANG-YONG AND AMINISTRY
OF JUSTICE KIM YU-HU, THE THIRD MAN ON THE DELEGATION WHICH
MET WITH THE CIVILETTI GROUP, TO DISCUSS THE MPAA. ROK SIDE WAS
WORKING WITH OUR DRAFT, WHICH FACILITATED THE DISCUSSION.
EARLIER INDICATIONS HAD BEEN THAT THEY WRE ATTEMPTING TO LIFT
STANDARD MPAA FROM AVAILABLE LEGAL TEXT.

2. FOLLOWING ARE KEYED TO PARAGRAHS PROVIDED BY WASHINGTON.

PREAMBLE: MOJ HAD NO DIFFICULTY WITH PREAMBLE BUT IS
CONSIDERING INCLUSION OF MORE FULSOME PHRASES, NOT AVAILABLE,
REGARDING US/ROK COOPERATION AND RELATIONSHIP.

1. MOJ REQUESTS PRESENT PARA 1 BE REPLACED WITH FOLLOWING:

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QUOTE THE MINISTRY OF JUSTICE OF THE REPUBLIC OF
KOREA AND THE UNITED STATES DEPARTMENT OF JUSTICE AGREE
TO RENDER, IN ACCORDANCE WITH THE LAWS OF THE RI RESPEC-
TIVE COUNTRIES, WITH THE PROVISIONS OF THE JOINT STATE-
MENT REGARDING COOPERATION BETWEEN THE GOVERNMENTS OF
THE REPUBLIC OF KOREA AND THE UNITED STATES CONCERNING

THE CASE OF MR. TONGSUN PARK ISSUED ON
AND WITH THE PROVISIONS OF THIS AGREEMENT, MUTUAL ASSISTANCE
TO THE PROSECUTORS IN THEIR RESPECTIVE COUNTRIES WITH
RESPECT TO THE ACTIVITIES OF MR. TONGSUN PARK PERTAINING
TO ALLEGED BRIBERY OF U.S OFFICIALS OR PERSONS HEREIN-
AFTER REFERRED TO AS "THE U.S. OFFICIALS." END QUOTE.
POLCOUNS OBSERVED THAT THIS WAS RATHER LENGTHY BEGINNING
TO BE OFFERED BY THE SIDE WHICH HAD REQUESTED BREVITY,
BUT AGREED TO REQUEST WASHINGTON REACTION.

NEW PARA 2. MOJ REQUESTS THE ADDITION OF THE FOLLOWING
PARAGRAPH: QUOTE 2. ALL REQUESTS FOR ASSISTANCE MAY BE
COMMUNICATED DIRECTLY BETWEEN THE MINISTRY OF JUSTICE
OF THE REPUBLIC OF KOREA AND THE UNITED STATES DEPART-
MENT OF JUSTICE. END QUOTE. COMMENT: THIS OBVIOUSLY
IS MOJ'S EFFORT TO BE SEEN AS DIRECTLY IN THE ACT.
THE WORDING WAS MODIFIED DURING DISCUSSION TO USE
THE WORD "MAY" IN PLACE OF THE WORD "SHALL."

PARA 2. MOJ REQUESTS THIS BE RENUMBERED PARA 3.
KIM ALSO NOTED THAT PARK HAS MORE THAN ONE LAWYER AND
WONDERED IF THE WORD "COUNSEL" WOULD SUFFICE TO COVER THE
MULTITUDE OR WHETHER THIS SHOULD BE PLURALIZED TO "COUNSELS."
POLCOUNS SAID HE BELIEVED "COUNSEL" WOULD SUFFICE BUT AGREED
TO CHECK. NO FURTHER AMENDMENTS.

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PARA 3. RENUMBER PARA 4. MOJ REQUESTS INCLUSION
OF QUOTE IN SEOUL, IN THE PRESENCE OF TWO KOREAN
OFFICIALS, END QUOTE FOLLOWING QUOTE AT THE MEETING TO BE HELD
AT THE AMERICAN EMBASSY END QUOTE. ALSO REQUESTED INCLUSION
OF THE PHRASE QUOTE TO GRANT HIM FULL IMMUNITY FROM ANY
PAST CRIMINAL CONDUCT AND END QUOTE BETWEEN QUOTE THE
DEPARTMENT OF JUSTICE'S OFFICER END QUOTE AND QUOTE TO SEEK
DISMISSAL END QUOTE. FURTHER, A REQUEST FOR A DEFINITION
OF THE COOPERATION REQUIRED IN THIS SENTENCE WAS MADE.
WITH RESPECT TO THIS PARAGRAPH, KIM STATED THAT THE PRE-
FERRED POSITION WAS TO MODIFY THE LANGUAGE TO HAVE DISMISSAL
OF THE INDICTMENT OCCUR PRIOR TO MR. PARK'S TRAVEL TO THE
UNITED STATES. POLCOUNS POINTED OUT WE HAD BEEN OVER THIS
ON NUMEROUS OCCASIONS, THAT IT WAS STANDARD PRACTICE, AND
THAT PARK'S ATTORNEY, HUNDLEY, WAS AGREEABLE TO THIS
PROCEDURE. KIM ASKED, IF HUNDLEY WERE AGREEABLE, WHY HIS
ASSOCIATE ROSENBAUM, WHO IS NOW IN SEOUL ADVISING PARK,
WAS TELLING HIM THAT THE FIRM'S EXPERIENCE IN WORKING
WITH JUSTICE INDICATED THAT PRIOR DISMISSAL OF THE INDICT-
MENT WAS ENTIRELY POSSIBLE AND THAT HE SHOULD HOLD OUT
FOR SUCH A PROCEDURE. HE SAID MOJ WAS AGREEABLE TO
THE PARAGRAPH AS AMENDED ABOVE BUT THAT PARK WAS THE

PROBLEM. WOULD APPRECIATE CONFIRMATION THAT HUNDLEY IS AGREEABLE TO US DESIRED PROCEDURE AND THAT HE IS SO ADVISING HIS CLIENT.

PARA 4. RENUMBER PARAGRAPH 5. A VERY LONG DISCUSSION ENSUED REGARDING THIS PARAGRAPH. KOREAN SIDE WANTED TO HOLD TO BRIEF STATEMENT AS FOLLOWS QUOTE DURING THE QUESTIONING OF MR. TONGSUN PARK IN SEOUL, KOREA, ENGLISH MAY BE USED IN QUESTIONS AND ANSWERS ALONG WITH KOREAN WITH THE HELP OF INTERPRETERS. END QUOTE. POLCOUNS INFORMED THEM SEVERAL TIMES AND WITH RISING INTENSITY THAT SUCH A FORMULATION WAS TOTALLY UNACCEPTABLE. HE POINTED OUT NEED FOR PACE AND OUR UNWILLINGNESS TO SACRIFICE THIS TO TRANSLATION. AFTER AN HOUR IT WAS
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AGREED THAT POLCOUNS WOULD SEEK WASHINGTON APPROVAL TO MODIFY SECOND SENTENCE AS FOLLOWS QUOTE MR. PARK'S ANSWERS TO A PARTICULAR QUESTION WILL BE STATED IMMEDIATELY AND WITHOUT DELAY AND SIMULTANEOUS TRANSLATION INTO KOREAN OR ENGLISH WILL BE EMPLOYED AS NEEDED. END QUOTE. KIM AGREED TO GO BACK AND ATTEMPT TO CONVINCE MOJ TO ACCEPT THIS LANGUAGE.

PARA 5. RENUMBER AS PARAGRAPH 6. MOJ REQUESTED THAT QUOTE BRIEFLY END QUOTE BE DELETED FROM THE FIRST SENTENCE. EXPLANATION HERE WAS THAT IT DID NOT SQUARE

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WITH JOINT STATEMENT, WHICH PROVIDED FULL QUESTIONING BY BOTH SIDES. MOJ ALSO REQUESTED THAT QUOTE WITHOUT INTERRUPTION END QUOTE BE DELETED FROM THE END OF THE SECOND SENTENCE. IN LIGHT OF PROTRACTED DISCUSSION OF PRECEDING PARAGRAPH, POLCOUNS STATED HIS DISINCLINATION EVEN TO REQUEST WASHINGTON VIEWS ON SUCH A DELETION. IT WAS FINALLY AGREED HE WOULD REQUEST THE DELETION, PROVIDED FULL ASSURANCE WAS GIVEN THAT AN ORAL STATEMENT TO THIS EFFECT WOULD BE MADE BY THE KOREAN SIDE AT THE TIME OF THE MEETING BETWEEN THE MINISTRY OF JUSTICE AND THE DEPARTMENT OF JUSTICE OFFICIALS.

PARA 6. RENUMBER AS PARA 7. MOJ REQUESTED THAT THE WORDING BE REARRANGED AS FOLLOWS FOR CLARITY: QUOTE AT THE OPTION OF THE AMERICAN PROSECUTORS IN LIEU OF QUESTIONING ON THE RECORD, MR. PARK MAY BE EXAMINED CONCERNING ANY QUESTION PREVIOUSLY PUT, OR BE INTERVIEWED OFF THE RECORD, BY UNITED STATES POLYGRAPH EXAMINER IN THE PRESENCE OF KOREAN OFFICIALS. END QUOTE.

PARA 7. RENUMBER AS PARA 8. INITIAL MOJ POSITION HAD BEEN TO LIFT WORDING ON THIS SUBJECT FROM THE JOINT STATEMENT AND HOLD TO THAT. POLCOUNS REJECTED THIS, NOTING THAT JOINT STATEMENT WAS DESIGNED FOR PUBLIC RELEASE AND THAT GREATER DETAIL, TO PRECLUDE SURPRISES TO EITHER SIDE, SECRET

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WAS REQUIRED IN MPAA. IT WAS FINALLY AGREED THAT LANGUAGE WOULD REMAIN AS DRAFTED, BUT THAT POLCOUNS WOULD ASK IF ACTIONS AND MEETINGS BY US OFFICIALS IN KOREA WOULD BE COVERED. HE SAID HE THOUGHT THEY WOULD, BUT WOULD SEEK CLARIFICATION.

PARA 8. RENUMBER AS PARAGRAPH 9. MOJ REQUESTS INSERTION OF QUOTE AS A WITNESS END QUOTE BETWEEN QUOTE UNITED STATES END QUOTE AND QUOTE IN CONNECTION END QUOTE, DELETION OF QUOTE OR PERSONS END QUOTE FOLLOWING QUOTE OFFICIALS END QUOTE, AND THAT WORD QUOTE QUESTIONING END QUOTE BE CHANGED TO "EXAMINATION."

PARA 9. RENUMBER AS PARAGRAPH 10. MOJ REQUESTED DELETION OF QUOTE OR PERSONS END QUOTE AND INSERTION OF QUOTE COURT END QUOTE BETWEEN WORDS QUOTE RELATED END QUOTE AND QUOTE PROCEEDINGS END QUOTE.

PARA 10. RENUMBER AS PARAGRAPH 11. MOJ REQUESTED THAT FINAL PHRASE IN THIS SENTENCE BE MODIFIED TO READ AS FOLLOWS: QUOTE ARRANGEMENTS WILL BE MADE TO QUESTION HIM IN SEOUL, KOREA PURSUANT TO THE EXISTING AGREEMENTS

... END QUOTE.

PARA 11. RENUMBER AS PARAGRAPH 12. NO FURTHER CHANGES.

PARA 12. RENUMBER AS PARA 13. NO FURTHER CHANGES.

PARA 13. MINISTRY OF JUSTICE STRONGLY URGED DELETION OF THIS PARAGRAPH, WHICH COULD BE MADE AS UNILATERAL STATEMENT BY THE US. POLCOUNS AGREED THAT THIS MIGHT BE POSSIBLE IF OTHER DIFFICULTIES COULD BE RESOLVED.

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3. MOJ ALSO REQUESTED ADDITION OF FOLLOWING NEW PARAS.
QUOTE 14. EXCEPT AS PROVIDED IN PARAGRAPHS 10, 12, AND 13, ALL INFORMATION MADE AVAILABLE BY THE MINISTRY OF JUSTICE OF THE REPUBLIC OF KOREA AND THE UNITED STATES DEPARTMENT OF JUSTICE PURSUANT TO THIS AGREEMENT, AND ALL CORRESPONDENCE BETWEEN THEM RELATING TO SUCH INFORMATION AND TO THE IMPLEMENTATION OF THIS AGREEMENT, SHALL BE KEPT CONFIDENTIAL AND SHALL NOT BE DISCLOSED TO THIRD PARTIES OR TO GOVERNMENT AGENCIES EXCLUDING AGENCIES INVESTIGATING ALLEGED BRIBERY OF THE U.S. OFFICIALS, UNLESS OTHERWISE AGREED.

PARA 15. THE MINISTRY OF JUSTICE OF THE REPUBLIC OF KOREA AND THE UNITED STATES DEPARTMENT OF JUSTICE SHALL GIVE ADVANCE NOTICE PRIOR TO THE USE OF ANY INFORMATION MADE AVAILABLE PURSUANT TO THIS AGREEMENT.

PARA. 16. THIS AGREEMENT SHALL ENTER INTO FORCE ON THE DATE OF SIGNATURE BY BOTH REPRESENTATIVES OF THE MINISTRY OF JUSTICE OF THE REPUBLIC OF KOREA AND THE UNITED STATES DEPARTMENT OF JUSTICE.

DONE AT SEOUL, THIS TH DAY OF
IN DUPLICATE IN THE KOREAN AND ENGLISH LANGUAGES.
BOTH TEXTS BEING EQUALLY AUTHENTIC.

(NORMAL SIGNATURE BLOCKS FOLLOW) END QUOTE.

COMMENT: KIM NOTED THAT NEW PARAGRAPH 14 WAS ADDED TO DELINEATE THE EXTENT OF CONFIDENTIALITY OF THIS DOCUMENT. NEW 15 WAS TO ALLOW ROK TO ANTICIPATE WHEN LEAKS MIGHT OCCUR AND EXPLANATIONS BE REQUIRED, AND NEW 16 WAS SELF-EXPLANATORY.

4. COMMENT: IT WAS OBVIOUS THAT POLCOUNS DURING THIS
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TWO-HOUR-PLUS MEETING WAS BEING USED TO DEMONSTRATE TO MOJ HOW INFLEXIBLE AMERICANS WERE WITH REGARD TO MPAA. HE PLAYED THIS ROLE FULLY AND WITH SOME PLEASURE. IN PRIVATE DISCUSSION WITH PAK FOLLOWING MEETING, POLCOUNS POINTED OUT THAT IT WAS ESSENTIAL FOR MOJ TO AGREE ON BASIC SUBSTANTIVE POINTS. PAK ASSURED HIM OF HIS UNDERSTANDING OF THIS AND OF HIS INTENTION TO BRIEF THE FOREIGN MINISTER IMMEDIATELY SO THAT INPUT TO MOJ COULD BE AT THE HIGHEST LEVEL. IT WAS AGREED AT THAT TIME THAT A FURTHER MEETING WOULD BE SCHEDULED AS SOON AS A REPLY FROM WASHINGTON HAD BEEN RECEIVED.
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